

SEAN M. QUINLAN Confidential Attorneys Eyes Only

May 2, 2007

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

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VISTO CORPORATION,

Plaintiff,

vs.

No. 2:05-CV-546 (DJF)

MICROSOFT CORPORATION,

Defendant.

\_\_\_\_\_ /

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Videotaped Deposition of

SEAN M. QUINLAN

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Wednesday, May 2, 2007

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12:02:35 1 Q. Is there any version information that gets  
12:02:38 2 sent back and forth in ConstantSync?

12:02:41 3 MR. HANSEN: Object to form.

12:02:42 4 THE WITNESS: The ConstantSync, the protocol  
12:02:52 5 messages that we send back and forth currently for  
12:02:55 6 ConstantSync don't include any version time stamps.

12:02:58 7 Q. BY MR. STEPHENS: So there's no situation in  
12:03:00 8 which you compare version information from the terminal  
12:03:02 9 with version information behind the firewall to determine  
12:03:08 10 whether a particular element has changed; is that right?

12:03:10 11 MR. HANSEN: Object to form.

12:03:11 12 THE WITNESS: No. We compare the locally  
12:03:19 13 stored version information with -- between the local  
12:03:23 14 mapping table and the local data store.

12:03:28 15 Q. BY MR. STEPHENS: Now, is there a situation  
12:03:29 16 where you pick between a version that's on a terminal and  
12:03:33 17 a version that's behind the firewall and say this is the  
12:03:36 18 one that I'm going to propagate to both places?

12:03:38 19 A. No.

12:03:39 20 Q. I'd like to talk for a few minutes about  
12:04:04 21 IMAP. Do you know when IMAP first was available? I mean  
12:04:11 22 the standards describing the specification or the  
12:04:16 23 protocol? Excuse me. Pardon me. I'm stumbling over my  
12:04:21 24 own question.

12:04:21 25 A. No, I don't.

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12:04:22 1 Q. It was before 1996, though; right?

12:04:25 2 A. Probably. Probably. I can't recall, but

12:04:27 3 probably.

12:04:28 4 Q. Okay. I have some documents which I'll

12:04:30 5 probably be showing you later --

12:04:32 6 A. Oh, 1990 -- yeah. Again, before 1996, I

12:04:38 7 never used IMAP so I'm not really sure --

12:04:41 8 Q. Okay. It's a long time ago.

12:04:43 9 A. Yeah.

12:04:44 10 Q. IMAP supports --

12:04:47 11 A. I guess it existed in 1996 because I remember

12:04:50 12 using it as soon as I got to Visto. So it must have

12:04:53 13 existed prior to that, but I didn't have any knowledge of

12:04:57 14 it prior to then.

12:04:57 15 Q. Do you remember what time of year in 1996 you

12:05:01 16 first came to Visto?

12:05:02 17 A. November.

12:05:03 18 Q. Okay. So IMAP existed not just as a

12:05:07 19 specification, but as software that you could use by

12:05:10 20 November 1996; right?

12:05:11 21 A. Yes.

12:05:12 22 Q. And IMAP supports the use of multiple clients

12:05:17 23 with a single mailbox; right?

12:05:26 24 A. I believe so.

12:05:27 25 Q. And you can synchronize a local copy of your

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12:05:31 1 mailbox on each client; right?

12:05:35 2 A. I believe that's the case, yes.

12:05:37 3 Q. And it will propagate changes in both

12:05:41 4 directions, right, both from the server to the client and

12:05:44 5 from the client to the server?

12:05:48 6 A. Yes, I believe so.

12:05:50 7 Q. And IMAP worked through firewalls, right, if

12:05:59 8 you configured the firewall correctly?

12:06:02 9 A. Well, I suppose anything would work through a

12:06:06 10 firewall if you configured the firewall correctly. So...

12:06:09 11 Q. Well, and IMAP had a well-known port.

12:06:13 12 A. It does have a well-known port.

12:06:15 13 Q. And did back in 1996; right?

12:06:17 14 A. Yes.

12:06:18 15 Q. Were you aware of efforts to use IMAP over

12:06:21 16 SSL?

12:06:27 17 MR. HANSEN: Object to form.

12:06:28 18 THE WITNESS: As I recall, SSL was somewhat

12:06:32 19 new right about then. I don't know that anyone was using

12:06:38 20 IMAP over SSL in 1996. I don't remember that SSL existed

12:06:47 21 yet, but it may have.

12:06:50 22 Q. BY MR. STEPHENS: SSL was developed by

12:06:51 23 Netscape; is that right?

12:06:52 24 A. Yes.

12:06:52 25 Q. And it stands for secure sockets layer?

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13:46:46 1 yeah.

13:46:46 2 Q. Now, you mentioned scaling up to 100,000

13:46:50 3 users per server. That's not something you ever tested;

13:46:54 4 right?

13:46:54 5 A. No.

13:46:54 6 Q. Have you ever tested using 100 MDC servers in

13:46:58 7 a single deployment before?

13:46:59 8 A. I don't think so.

13:47:01 9 Q. Do you think that would be a problem?

13:47:04 10 A. No, I think they could work. Yeah.

13:47:09 11 Q. But then for each UDP broadcast, 99 of those

13:47:13 12 servers would be ignoring the UDP message and only one

13:47:17 13 would be responding; right?

13:47:19 14 A. Right.

13:47:19 15 Q. It was -- I'm sorry, go ahead.

13:47:21 16 A. I think they're still relatively rare enough

13:47:25 17 that that wouldn't cause a load problem.

13:47:27 18 Q. Okay.

13:48:02 19 (Exhibit 2 marked.)

13:48:04 20 Q. BY MR. STEPHENS: Mr. Quinlan, the court

13:48:05 21 reporter has handed you Exhibit Quinlan 2. And that is

13:48:10 22 U.S. Patent 6,708,221. And you're named as an inventor

13:48:15 23 on that patent; right?

13:48:17 24 A. Yes.

13:48:19 25 Q. What was your involvement with this patent?

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14:22:36 1 modification. This one claim doesn't describe any

14:22:39 2 modification.

14:22:39 3 Q. Except as construed by the Court where it

14:22:42 4 says that it must be independently modifiable?

14:22:45 5 MR. HANSEN: Object to form.

14:22:46 6 THE WITNESS: Well, again, what you read to

14:22:49 7 me from the Court didn't say data that is stored at the

14:22:54 8 NOC that is involved in synchronization must be

14:22:59 9 independently modifiable. It said the NOC must store

14:23:04 10 independently modifiable data.

14:23:06 11 Q. BY MR. STEPHENS: Workspace data, selected

14:23:09 12 portions of workspace data.

14:23:11 13 A. Right. It didn't say workspace data that's

14:23:13 14 involved in synchronization.

14:23:15 15 Q. Okay. That's why I would ask you to assume

14:23:16 16 that it's the same workspace data that's referred in the

14:23:21 17 claim that's --

14:23:21 18 A. Okay. I don't know whether that's a good

14:23:23 19 assumption or not. So I can't really draw any conclusion

14:23:26 20 based on it.

14:23:27 21 Q. Okay. Fair enough. Well, let me ask a

14:23:30 22 different question, then.

14:23:30 23 Could you explain to me how Claim 1 is

14:23:33 24 different from an IMAP server synchronizing with two

14:23:37 25 clients in the same --

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14:23:39 1 MR. HANSEN: Object. Form.

14:23:40 2 Q. BY MR. STEPHENS: -- in the same mailbox?

14:24:39 3 A. I'm not sure.

14:24:40 4 Q. So you can't point to any differences?

14:24:52 5 A. Presumably the claim is referring to

14:24:54 6 something that's outlined elsewhere in the patent. Just

14:25:00 7 based on the claim language, it's hard for me to point to

14:25:06 8 a specific difference.

14:25:19 9 Q. And certainly I would invite you to consider

14:25:23 10 the word "global server" to mean a server accessible from

14:25:27 11 remote locations which stores independently modifiable

14:25:31 12 copies of selected portions of workspace data.

14:25:37 13 A. Yeah, it's hard for me to say based on the

14:25:59 14 claim language. I suppose the difference must come from

14:26:03 15 details elsewhere in the patent.

14:26:05 16 Q. Okay. Well, let's step through the claim

14:26:08 17 first, and then I'll invite you to take as much as time

14:26:11 18 as you want to look through the patent and see if you can

14:26:14 19 identify anything.

14:26:15 20 But you would agree that workspace data

14:26:18 21 includes email; right?

14:26:19 22 A. That seems reasonable.

14:26:22 23 Q. And that IMAP is a method for synchronizing

14:26:27 24 workspace data; right?

14:26:29 25 A. Well, IMAP is certainly a method for

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14:26:34 1 synchronizing email.

14:26:35 2 Q. And if email is a type of workspace data --

14:26:45 3 A. IMAP is certainly a method for synchronizing  
14:26:49 4 email, which is a type of workspace data.

14:26:53 5 Q. All right. And if you have an IMAP client  
14:26:56 6 that stores first workspace data on a first device;  
14:26:59 7 right? If you have an IMAP client on a computer?

14:27:02 8 A. If I have an IMAP client, it certainly stores  
14:27:05 9 email locally on the device, yes.

14:27:07 10 Q. And if you have a second IMAP client that can  
14:27:10 11 function as a second workspace -- excuse me, that can  
14:27:15 12 store second workspace data on a second device; right?

14:27:19 13 A. An IMAP client, yeah, again.

14:27:21 14 Q. Okay. And in the process of synchronizing  
14:27:26 15 those two devices with the same mailbox on a server, you  
14:27:31 16 would determine the differences between first workspace  
14:27:34 17 data and second workspace data; right?

14:27:36 18 MR. HANSEN: Object to form.

14:27:36 19 THE WITNESS: Yeah, it's -- I mean, IMAP  
14:27:55 20 always works as a hub and spoke kind of system where  
14:28:01 21 you're synchronizing a local client to a central store  
14:28:04 22 and the synchronization with the other client is  
14:28:06 23 independent of it. The fact that I can get my email from  
14:28:12 24 one device to another is kind of a side effect of the  
14:28:15 25 fact that they're both synchronizing with the central

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14:28:18 1 store.

14:28:21 2 Whether this middle sentence is implying some  
14:28:26 3 mechanism that's trying to relate the two devices  
14:28:29 4 together or not, I'm not sure. But certainly that's not  
14:28:33 5 the case in IMAP. It's a side effect of the system.

14:28:36 6 Q. Well, and it wasn't the case in the system  
14:28:39 7 that Visto was using at the time --

14:28:41 8 A. Yeah, there wasn't a Visto system of 2000.  
14:28:53 9 The identities of the individual devices was not -- or  
14:29:00 10 the synchronization of one device with the central store  
14:29:03 11 was not heavily correlated with the synchronization of  
14:29:06 12 another device with the central store.

14:29:08 13 Q. In the same way that IMAP works; right? Each  
14:29:11 14 device would separately synchronize with the central  
14:29:15 15 server?

14:29:15 16 A. No, I think it's similar. Similar.

14:29:17 17 Q. So to the extent that Visto was practicing  
14:29:20 18 Claim 1, then, IMAP worked much the same way?

14:29:24 19 MR. HANSEN: Object to form.

14:29:25 20 Q. BY MR. STEPHENS: In determining differences  
14:29:27 21 between first workspace data and second workspace data?

14:29:32 22 A. Well, at least the way Visto was  
14:29:34 23 synchronizing email at the time was somewhat analogous to  
14:29:38 24 the way you might synchronize IMAP data from one client  
14:29:41 25 to another.

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14:29:42 1 Q. And then sending the differences from the  
14:29:45 2 global server to the second device, that's also something  
14:29:47 3 that IMAP would do in order to bring the second device  
14:29:50 4 into synchronization; right?

14:29:52 5 A. Certainly that does happen in IMAP, you  
14:29:57 6 sync -- hook up a second device, you synchronize the  
14:30:00 7 changes from the IMAP server down to your second device.

14:30:03 8 Q. So unless there's something in some other  
14:30:06 9 part of the patent that narrows the language that we see  
14:30:09 10 here in Claim 1 to exclude IMAP, it looks like IMAP reads  
14:30:13 11 directly on Claim 1; right?

14:30:15 12 MR. HANSEN: Object to form.

14:30:16 13 THE WITNESS: Yeah, I'm not sure. It -- on  
14:30:25 14 this reading of Claim 1, it doesn't seem by itself  
14:30:31 15 sufficient for me to exclude IMAP from operating in a  
14:30:37 16 similar way.

14:30:38 17 Q. BY MR. STEPHENS: Okay. Well, let me invite  
14:30:40 18 you now to take a few minutes and look through the  
14:30:43 19 patent, and if there's anything you can point me to that  
14:30:47 20 is different than IMAP, I'd like for you to do that. We  
14:30:51 21 can take a break if you want to do that. Whatever you'd  
14:30:54 22 prefer.

14:30:54 23 A. Okay. It could take a while to study it in  
14:31:02 24 depth. It is a long document. Yeah, I don't know how we  
14:31:23 25 might want to do this. I haven't looked at this patent

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14:31:28 1 in a long time. To try to go through it and try to find  
14:31:32 2 a counter argument, I'm not sure. It could take a while.

14:31:36 3 Q. Why don't we start with the figures, and if  
14:31:38 4 you look through the figures, if you could point to  
14:31:40 5 something, maybe that would short-circuit it. If you get  
14:31:44 6 to the figures and feel like you need to read the text,  
14:31:48 7 then we can figure out how to approach it at that point.

14:35:26 8 A. Well, just from an initial glance, it appears  
14:35:29 9 to me that the system described in the patent includes  
14:35:35 10 some elements that aren't normally present in an IMAP  
14:35:39 11 system, especially the global translator.

14:35:48 12 Some other elements may be -- various applets  
14:36:04 13 for presumably downloading a -- I'm guessing that's for  
14:36:11 14 downloading extra capabilities to a remote device. And,  
14:36:21 15 of course, the application to other data sources aside  
14:36:28 16 from email.

14:36:57 17 I'd need more time to review to see what kind  
14:37:00 18 of synchronization algorithm is implied by the patent. I  
14:37:08 19 can't quite tell just by looking at the diagrams. But  
14:37:14 20 the global translator does remind me that the system that  
14:37:19 21 we were trying to build also included bridging different  
14:37:27 22 inhomogeneous systems, different data stores.

14:37:33 23 So that would be at least one aspect off the  
14:37:38 24 top of my head I can think of that makes it a little bit  
14:37:40 25 different than the IMAP use case.

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14:37:43 1 Q. But none of those things you mentioned are  
14:37:45 2 described in the claim that we looked at; is that right?

14:37:49 3 A. Claim No. 1 doesn't seem to touch on those.

14:37:52 4 Q. Just to talk about the translation function  
14:37:55 5 for a moment, that is something that occurs in normal  
14:37:58 6 email systems; is that right?

14:38:00 7 So, for example, a normal email system might  
14:38:03 8 well translate between SMTP and IMAP or SMTP and POP or  
14:38:09 9 X400 and SMTP?

14:38:11 10 MR. HANSEN: Object the form.

14:38:12 11 THE WITNESS: Well, an email system could  
14:38:17 12 make such translations, yes.

14:38:18 13 Q. BY MR. STEPHENS: And those kinds of email  
14:38:20 14 systems and gateways were around before Visto was ever  
14:38:24 15 formed; right?

14:38:24 16 MR. HANSEN: Object to form.

14:38:25 17 THE WITNESS: Well, when IMAP makes the  
14:38:30 18 translation from SMTP to its own IMAP format, for one  
14:38:43 19 thing, it can cough up the mail in the original format  
14:38:48 20 because there's a sort of canonical email format defined  
14:38:52 21 by SMTP or -- well, RFC 22.

14:39:05 22 And I don't know of a case where you would  
14:39:08 23 plug in additional translation modules into an IMAP  
14:39:12 24 server for, you know, all different kinds of data types.

14:39:17 25 Q. BY MR. STEPHENS: Okay. Well, but

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16:57:33 1 MR. HANSEN: Object to form.

16:57:34 2 THE WITNESS: I'm not aware that Visto

16:57:40 3 invented the concept of synchronization.

16:57:43 4 Q. BY MR. STEPHENS: And Visto also did not

16:57:44 5 invent the concept of synchronizing email; right?

16:57:48 6 MR. HANSEN: Object to form.

16:57:49 7 THE WITNESS: I'm not aware that we invented

16:58:02 8 the concept of synchronization of email.

16:58:05 9 Q. BY MR. STEPHENS: And Visto also was not the

16:58:07 10 first to allow people using Smartphones to receive email

16:58:11 11 on their Smartphone; right?

16:58:26 12 A. I believe it's possible that other vendors

16:58:29 13 beat us to the market of delivering email to Smartphones.

16:58:33 14 I'm not certain of the exact order.

16:58:35 15 Q. Have you heard of a Nokia phone that allowed

16:58:38 16 you to retrieve email using IMAP in 1996?

16:58:55 17 A. No, I'm not aware of that phone, not that I

16:58:58 18 recall.

16:58:58 19 Q. You would agree, though, that such a phone

16:59:01 20 would perform email synchronization?

16:59:02 21 MR. HANSEN: Object to form.

16:59:10 22 THE WITNESS: The IMAP protocol includes

16:59:14 23 email synchronization.

16:59:15 24 Q. BY MR. STEPHENS: So if a Nokia phone

16:59:17 25 supported IMAP in 1996, that phone would support email

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16:59:21 1 synchronization, right, assuming that it fully supported  
16:59:24 2 the IMAP protocol?

16:59:29 3 A. Yeah, I'm not certain what part of the  
16:59:33 4 protocol it supported, but I would have to guess that if  
16:59:38 5 it was a fully functioning IMAP client, that that would  
16:59:42 6 be email synchronization.

16:59:46 7 Q. Do you have any reason to believe that there  
16:59:51 8 were no such phones before Visto came up with its  
16:59:54 9 inventions?

16:59:55 10 MR. HANSEN: Object to form.

16:59:56 11 THE WITNESS: Oh, I don't -- I don't know.

17:00:00 12 Q. BY MR. STEPHENS: Okay. Did Visto invent  
17:00:06 13 synchronization through a firewall?

17:00:08 14 MR. HANSEN: Object to form.

17:00:27 15 THE WITNESS: I don't know.

17:00:28 16 Q. BY MR. STEPHENS: Is there anything special  
17:00:30 17 about Visto's technology that makes it especially  
17:00:35 18 suitable for use with phones as opposed to hand-held pin  
17:00:39 19 devices that don't include telephone capabilities?

17:01:00 20 A. A solution could be made to work with devices  
17:01:03 21 that don't have telephony.

17:01:06 22 Q. And it works just as well; right?

17:01:09 23 A. There are differences, but they can be made  
17:01:14 24 to work.

17:01:15 25 Q. What differences are there?

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